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No. 73-782

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In the Supreme Court of the United States

OCTOBER TERM, 1973

CHARLES C. HIBBS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Eastern District of Pennsylvania, petitioner was convicted on 39 counts of an indictment charging submission of false certifications to the Federal Housing Administration (part of the Department of Housing and Urban Development) respecting numerous properties in the City of Philadelphia, in order to influence that agency's action, in viola-

tion of 18 U.S.C. 1010. The court of appeals affirmed without opinion (Pet. App. B).[1]

Evidence at trial showed that petitioner, a real estate speculator specializing in inner city properties, purchased thirteen residential properties in Philadelphia in 1966, thereafter leasing them to low income tenants. In 1969 he decided to sell the properties through the mortgage insurance program of the Federal Housing Administration (FHA). To do so, certain documents relating to each property were required, including a plumbing and heating certification, a roofing certification, and an electrical certification, each such document establishing that the property conformed to FHA standards. Evidence at trial established that petitioner knowingly furnished false certifications for the purpose of influencing the action of the Department of Housing and Urban Development, *i.e.*, for the purpose of procuring FHA-insured mortgages.

Petitioner contends that his conviction should be reversed for alleged defects in the indictment as to the element of intent, for denial by the district court of his motion for a bill of particulars, and because,

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[1] Petitioner had been tried previously on an indictment charging aiding and abetting in the submission of the same false certifications to the Federal Housing Administration, and was found guilty by a jury. Thereafter the district court granted petitioner's post-trial motion in arrest of judgment for failure of the indictment to state the requisite element of willfulness. Following the grand jury's return of a proper indictment, he was convicted in the instant proceeding.

he alleges, he had previously been placed in jeopardy for the same offense.

These claims are fully answered in the opinion of the district court (Pet. App. A) denying petitioner's post-verdict motions. We rely on that opinion in urging that the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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